



DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO-P-2022-0045]

USPTO AI Inventorship: Notice of Public AI Inventorship Listening Session – West Coast

AGENCY: United States Patent and Trademark Office, U.S. Department of Commerce.

ACTION: Notice of public listening session.

SUMMARY: The United States Patent and Trademark Office (USPTO) plays an important role in incentivizing and protecting innovation, including innovation enabled by artificial intelligence (AI), to ensure continued U.S. leadership in AI and other emerging technologies (ET). On February 14, 2023, the USPTO published a Federal Register Notice requesting comments regarding AI and Inventorship. The USPTO is announcing a public listening session on May 8, 2023, titled “AI Inventorship Listening Session.” The purpose of the listening session is to seek stakeholder input on the current state of AI technologies and inventorship issues that may arise in view of the advancement of such technologies, as set forth in the questions posed in the Federal Register Notice of February 14, 2023.

DATES: The AI Inventorship Listening Session will be held on May 8, 2023, from 10 a.m. to 3 p.m. PT (1 p.m. to 6 p.m. ET). Anyone seeking to attend in-person or speak, in-person or virtually, at the listening session must register by 9 a.m. PT (12 p.m. ET) on May 2, 2023. Anyone seeking to attend virtually at the listening session must register by 2 p.m. PT (5 p.m. ET) May 7, 2023. Seating is limited for in-person attendance.

ADDRESSES:

The public AI Inventorship Listening Session will take place virtually and in-person at Stanford University, Paul Brest Hall, 555 Salvatierra Walk, Stanford, CA 94305. All major entrances to the building are accessible to people with disabilities. Registration is required for both virtual and in person attendance. Information on registration is available at <https://www.uspto.gov/initiatives/artificial-intelligence/ai-and-emerging-technology-partnership-engagement-and-events>. Registrants must indicate whether they are registering as a listen-only attendee or as a speaker participant. More information about requests to participate as a speaker is provided below.

FOR FURTHER INFORMATION CONTACT: Aleksandr Kerzhner, Supervisory Patent Examiner, 571-270-1760 or Srilakshmi Kumar, Supervisory Patent Examiner, 571-272-7769. You can also send inquiries to AIPartnership@uspto.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In June 2022, the USPTO announced the formation of the AI/ET Partnership, which provides an opportunity to bring stakeholders together through a series of engagements to share ideas, feedback, experiences, and insights on the intersection of intellectual property and AI/ET. To build on the AI/ET Partnership efforts, in February 2023, the USPTO issued a Federal Register Notice titled “Request for Comments Regarding Artificial Intelligence and Inventorship,” 88 FR 9492 (February 14, 2023) (available at <https://www.federalregister.gov/documents/2023/02/14/2023-03066/request-for-comments-regarding-artificial-intelligence-and-inventorship>). The AI Inventorship Request for Comments (RFC) posed 11 questions for public comment on the current state of AI technologies and inventorship issues that may arise in view of the advancement of such technologies, especially as AI plays a greater role in the innovation process. As

indicated by the AI Inventorship RFC, the USPTO will hold stakeholder engagement sessions that will be announced in the Federal Register and posted on the AI/ET Partnership web page at <https://www.uspto.gov/aipartnership>. The USPTO is announcing the second of these stakeholder engagement sessions through this notice.

II. Public Listening Session

The USPTO will hold a public listening session on May 8, 2023 at Stanford University, Paul Brest Hall, 555 Salvatierra Walk, Stanford, CA 94305. The listening session will be held virtually and in person from 10 a.m. to 3 p.m. PT (1 p.m. to 6 p.m. ET). For registration, please visit <https://www.uspto.gov/initiatives/artificial-intelligence/ai-and-emerging-technology-partnership-engagement-and-events>. Registrants must indicate whether they are registering as a listen-only attendee or as a speaker participant.

Requests to participate as a speaker must include:

1. The name of the person desiring to participate;
2. The organization(s) that person represents, if any;
3. Contact information (zip code, telephone number, and email address);
4. Information on the specific topic(s) or question(s) from the RFC of interest to the speaker (or their organization); and
5. Full text of comments to be articulated during the listening session (discussed further below).

Speaking slots are limited, preference will be given to speakers based on the specific topic or question(s) provided in the request to participate. Selected speakers may be grouped by topic. Topics and speakers will be announced a few days prior to the event and listening session. Speakers may attend virtually or in person and are required to submit their remarks for the listening session in advance through the Federal eRulemaking Portal at <https://www.regulations.gov>. We will inform each speaker in advance of their assigned time slot. Time slots will be at least three minutes but may be

longer, depending on the number of speakers registered. USPTO personnel may reserve time to ask questions of particular speakers after the delivery of a speaker's remarks.

The listening session will be physically accessible to people with disabilities. Individuals requiring accommodation, such as sign language interpretation or other ancillary aids, should communicate their needs to Sheila Sanchez at disability.access@stanford.edu as soon as possible or at least seven (7) business days prior to the listening session.

III. Questions from the AI Inventorship RFC for Discussion at Listening Session

The purpose of the listening session is to obtain public input from a broad group of stakeholders on the current state of AI technologies and inventorship issues that may arise in view of the advancement of such technologies, as set forth in the questions presented in the Federal Register Notice titled “Request for Comments Regarding Artificial Intelligence and Inventorship,” 88 FR 9492 (February 14, 2023) (available at <https://www.federalregister.gov/documents/2023/02/14/2023-03066/request-for-comments-regarding-artificial-intelligence-and-inventorship>).

We encourage interested speakers to address the questions posed in the AI Inventorship RFC and to submit research and data that explain their comments on these questions. Official written comments to the questions raised in the AI Inventorship RFC should be submitted as outlined in the AI Inventorship RFC. For convenience, a list of the AI Inventorship RFC questions is provided below in their entirety.

1. How is AI, including machine learning, currently being used in the invention creation process? Please provide specific examples. Are any of these contributions significant enough to rise to the level of a joint inventor if they were contributed by a human?
2. How does the use of an AI system in the invention creation process differ from the use of other technical tools?

3. If an AI system contributes to an invention at the same level as a human who would be considered a joint inventor, is the invention patentable under current patent laws? For example:

a. Could 35 U.S.C. 101 and 115 be interpreted such that the Patent Act only requires the listing of the natural person(s) who invent(s), such that inventions with additional inventive contributions from an AI system can be patented as long as the AI system is not listed as an inventor?

b. Does the current jurisprudence on inventorship and joint inventorship, including the requirement of conception, support the position that only the listing of the natural person(s) who invent(s) is required, such that inventions with additional inventive contributions from an AI system can be patented as long as the AI system is not listed as an inventor?

c. Does the number of human inventors impact the answer to the questions above?

4. Do inventions in which an AI system contributed at the same level as a joint inventor raise any significant ownership issues? For example:

a. Do ownership rights vest solely in the natural person(s) who invented or do those who create, train, maintain, or own the AI system have ownership rights as well? What about those whose information was used to train the AI system?

b. Are there situations in which AI-generated contributions are not owned by any entity and therefore part of the public domain?

5. Is there a need for the USPTO to expand its current guidance on inventorship to address situations in which AI significantly contributes to an invention? How should the significance of a contribution be assessed?

6. Should the USPTO require applicants to provide an explanation of contributions AI systems made to inventions claimed in patent applications? If so, how should that be implemented, and what level of contributions should be disclosed? Should contributions to inventions made by AI systems be treated differently from contributions made by other (i.e., non-AI) computer systems?
7. What additional steps, if any, should the USPTO take to further incentivize AI-enabled innovation (i.e., innovation in which machine learning or other computational techniques play a significant role in the invention creation process)?
8. What additional steps, if any, should the USPTO take to mitigate harms and risks from AI-enabled innovation? In what ways could the USPTO promote the best practices outlined in the Blueprint for an AI Bill of Rights¹ and the AI Risk Management Framework² within the innovation ecosystem?
9. What statutory changes, if any, should be considered as to U.S. inventorship law, and what consequences do you foresee for those statutory changes? For example:
- a. Should AI systems be made eligible to be listed as an inventor? Does allowing AI systems to be listed as an inventor promote and incentivize innovation?
 - b. Should listing an inventor remain a requirement for a U.S. patent?
10. Are there any laws or practices in other countries that effectively address inventorship for inventions with significant contributions from AI systems?
11. The USPTO plans to continue engaging with stakeholders on the intersection of AI and intellectual property. What areas of focus (e.g., obviousness, disclosure, data protection) should the USPTO prioritize in future engagements?

¹ See <https://www.whitehouse.gov/ostp/ai-bill-of-rights/>.

² See <https://www.nist.gov/itl/ai-risk-management-framework>.

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Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

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